Remarks

Claims 1, 2, 4, 5, 9, and 12 to 20, as amended, are pending and before the Examiner.

The Examiner again rejected claims 1, 2, 4, 5, 9, and 12 to 20 for nonstatutory obviousness-type double patenting over claims 8 and 9 of Donsbach *et al.* (U.S. Patent No. 6,737,432) in view of Lacourciere *et al.* (American J. Therapeutics 2002, 9(2), pages 111-7).

In response, applicants herewith enclose a terminal disclaimer with respect to Donsbach *et al.* Accordingly, applicants respectfully request that the Examiner reconsider and withdraw this rejection.

The Examiner again rejected claims 1, 2, 4, 5, 9, and 12 to 20 as allegedly obvious over Hauel *et al.* (U.S. Patent No. 5,591,762) in view of Dinnebier *et al.* (J. of Pharmaceutical Sci., 2000, Vol. 89 (11), pages 1465-1479), in further view of Vippagunta *et al.* (Adv. Drug Delivery Rev., 2001, Vol. 48).

In response, applicant traverses the Examiner's rejection. The cited art do not disclose or suggest the claimed invention of a tablet or capsule comprising 30 to 90 mg of crystalline telmisartan sodium salt with a melting point of T=245°C ± 5°C. The Examiner has cited Example 230 of Hauel *et al.*, but Example 230 does not relate to crystalline telmisartan sodium salt with a melting point of T=245°C ± 5°C, nor does Example 230 involve a capsule or tablet containing 30 to 90 mg of this telmisartan sodium, as claimed, and the Examiner has not explained where there is evidence for some sort of motivation to make the particular modifications to Example 230 of Hauel *et al.* to arrive at the claimed invention and what the intended purpose of the modifications might be. Applicant has previously explained that the oral suspension of Example 232 of Hauel *et al.* is largely irrelevant to the instant claims. In defending the rejection, the Examiner incorrectly states that Hauel *et al.* "teaches capsules in both examples 230 and 232 and that reads upon applicant's claims directly." (Advisory Action, page 2). In fact, Example 230 is a "Coated Tablet" and Example 232 is an "Oral Suspension" and "capsule" appears nowhere in either example, so it is unclear what the basis for the Examiner's allegation is. The Examiner further remarks, "if the oral suspension was encapsulated it would still [*sic*] read on the claims." (Advisory Action, page 2). But of

course, the oral suspension of Example 232 (1) is **not** encapsulated, and (2) there is no reason to encapsulate the oral suspension of Example 232 or even any evidence provided that that such a product is possible. The Examiner has relied on Dinnebier *et al.* and Vippagunta *et al.* to combine with Hauel *et al.* and neither of these references provides what Hauel *et al.* lacks nor is there a reason for their teachings to be combined as the Examiner posits. For example, Dinnebier *et al.* does not disclose the sodium salt of telmisartan, referring to polymorphic forms of the free acid of telmisartan, not to any polymorphic forms of the sodium salt of telmisartan, much less that of the instant claimed invention, so it is unclear why one of skill in the art would think such teachings are applicable to the sodium salt of telmisartan. Similarly, Vippagunta *et al.* does not mention telmisartan or its sodium salt at all, so its teachings applied to telmisartan is speculative at best. However, it is particularly clear that none of these cited references teaches or suggests the particular dosage range for a capsule or tablet formulation as recited in the present claims. Accordingly, applicant respectfully requests that the Examiner reconsider and withdraw the rejection.

Applicant submits that all the pending claims are allowable and respectfully solicits a Notice of Allowance for all of the pending claims. If the Examiner feels that a telephone interview would be helpful in advancing prosecution of this application, the Examiner is invited to contact the attorney below.

Respectfully submitted,

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Date: October 21, 2010